

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matters of: Lead Case No.

5 RESIDENTIAL CAPITAL, LLC, et al., 12-12020-mg

6 Debtors.

7 - - - - -x

8 RESCAP LIQUIDATING TRUST,

9 Plaintiff, Adv. Pro. No.

10 - against - 14-01967-mg

11 ISGN FULFILLMENT SERVICES, INC.,

12 Defendant.

13 - - - - -x

14 RESCAP LIQUIDATING TRUST,

15 Plaintiff, Adv. Pro. No.

16 - against - 14-01968-mg

17 ISGN SOLUTIONS, INC.,

18 Defendant.

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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August 20, 2015

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10:05 AM

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22 B E F O R E:

23

HON. MARTIN GLENN

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U.S. BANKRUPTCY JUDGE

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1
2 Status Conference regarding Gosselin matter.

3
4 Status Conference RE: Objection to Claim(s) Filed by Alvin
5 and Sandra LaBostrie.

6
7 (CC: Doc# 8315, 8528, 8551) Status Conference RE: ResCap
8 Borrower Claims Trusts Objection to Proof of Claim No. 725.

9
10 (CC: Doc# 8859, 8864) ResCap Borrower Claims Trusts Eighty-
11 Eighth Omnibus Objection to Claims ((I) No Liability Borrower
12 Claims and (II) Reduce and Allow Borrower Claims).

13
14 Adversary proceeding: 14-01967-mg Rescap Liquidating Trust v.
15 ISGN Fulfillment Services, Inc.

16 Status Conference

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18 Adversary proceeding: 14-01968-mg Rescap Liquidating Trust v.
19 ISGN Solutions, Inc.

20 Status Conference
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1 P R O C E E D I N G S

2 THE COURT: Please be seated. We're here in
3 Residential Capital, number 12-12020.

4 MR. WISHNEW: Good morning, Your Honor.

5 THE COURT: Mr. Wishnew.

6 MR. WISHNEW: Jordan Wishnew, Morrison & Foerster, for
7 the ResCap Borrower Claims Trust, and with regards to Mr.
8 Boyd's stay relief motion, the ResCap Liquidating Trust.

9 THE COURT: I'm having a little trouble hearing you.

10 MR. WISHNEW: I'm sorry, Your Honor.

11 THE COURT: Go ahead.

12 MR. WISHNEW: Jordan Wishnew, Morrison & Foerster --

13 THE COURT: That part I heard.

14 MR. WISHNEW: -- okay, for the ResCap Borrower Claims
15 Trust, and at it concerns the stay relief motion filed by Mr.
16 Michael Boyd, the ResCap Liquidating Trust.

17 THE COURT: Okay, go ahead.

18 MR. WISHNEW: Your Honor, the first --

19 THE COURT: Mr. Boyd, are you on the phone?

20 MR. WISHNEW: The first set of matters going --

21 THE COURT: Hold on a second. Is Boyd on the phone?
22 No.

23 Go ahead.

24 MR. WISHNEW: Thank you, Your Honor. The first set of
25 matters going forward this morning are status conferences on

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1 page 8 of the agenda. There are three status conferences. The
2 first one concerns the claim of Rhonda Gosselin.

3 THE COURT: Yes.

4 MR. WISHNEW: I believe her counsel, Laird Heal, is on
5 the phone.

6 THE COURT: Mr. Heal, are you on the phone?

7 MR. HEAL: Good morning, Your Honor. This is Laird
8 Heal.

9 THE COURT: Good morning.

10 MR. WISHNEW: Your Honor, briefly. The Court had
11 issued an order on April 21st sustaining in part and overruling
12 in part, without prejudice, the Borrower Claims Trust's
13 objection to claim number 3862. There was subsequently a
14 motion for partial reconsideration which the Court also
15 granted. There are, I believe, three outstanding elements of
16 Ms. Gosselin's claim that remain outstanding.

17 Unfortunately, to date, we've not been able to --
18 despite our numerous requests -- get any sort of estimated
19 damages or proposed settlement from Ms. Gosselin to try and
20 engage in discussions. So we've put this status conference on
21 today's calendar in order to move forward, set a scheduling
22 order, and bring this to an evidentiary hearing.

23 THE COURT: Okay. Yes?

24 MR. WISHNEW: What we propose, Your Honor -- and this
25 was put into a letter that chambers received yesterday as part

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1 of a status letter, and it's also -- these dates have been
2 shared with Mr. Heal, to which we've not received any response
3 yet. But our proposal is discovery be completed no later than
4 October 2nd, 2015. An evidentiary hearing would be scheduled
5 at a date convenient for the Court, approximately one month
6 after the completion of discovery. Two weeks prior to the
7 scheduled evidentiary hearing, the parties shall file with the
8 Court pre-trial memoranda and findings of fact and conclusions
9 of law. And one week prior to the scheduled evidentiary
10 hearing, the parties would provide the Court and the opposing
11 party with pre-marked exhibits to be used during trial.

12 THE COURT: Mr. Heal, did you receive a copy of that
13 letter?

14 MR. HEAL: Yes, we did. And I spoke with the counsel
15 for ResCap. And this is, in all respects, what we agree to do.

16 THE COURT: Okay. We'll proceed on that basis, then.
17 What I would like you to do -- I guess -- I saw the letter; I
18 forgot to bring it out. I did see the letter. And rather than
19 having you do a separate order --

20 MR. WISHNEW: Okay.

21 THE COURT: -- we'll just endorse the letter. Those
22 dates -- I'm so ordering that those dates are the applicable
23 dates. We'll proceed in that fashion.

24 Mr. Heal, where are you located?

25 MR. HEAL: I'm in Worcester, Massachusetts.

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1 THE COURT: Okay. All right. So we'll try and make
2 sure we find a date for an evidentiary hearing that works for
3 you.

4 What I think we ought to do, counsel, is that after
5 discovery is closed, the two of you ought to discuss how many
6 witnesses you expect each side to call and how long a hearing
7 do you estimate will be required.

8 MR. WISHNEW: Okay.

9 THE COURT: I didn't go back and look at the prior
10 opinion, either the original opinion or on reconsideration
11 before coming out. My sense is that the issues -- the factual
12 issues are fairly narrow.

13 MR. WISHNEW: Yes, Your Honor.

14 THE COURT: And Mr. Heal, what I usually try to do
15 when we have an evidentiary hearing, is unless somebody
16 persuades me that credibility is at the heart of all of the
17 issues, I usually want written direct testimony in the form of
18 a declaration with the declarant in court for cross-
19 examination. And so Mr. Wishnew can tell you, because he's
20 familiar with how we've done some of these others, I would ask
21 that when we get -- once you reach the close of fact discovery,
22 see if the two of you can agree on submitting -- how many
23 witnesses, submitting direct testimony in written narrative
24 form by sworn declaration with the declarants in court. See
25 if -- to the extent you can agree on exhibits, usually that

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1 isn't so much of an issue. Usually you're able to stipulate as
2 to authenticity and usually as to relevance. And see how --
3 the extent to which you can streamline what evidentiary hearing
4 is required.

5 And then you and Mr. Wishnew can talk about possible
6 dates, when I have a better sense of how much time you think
7 you'll need. We'll try to accommodate a schedule that'll work
8 for both of you.

9 I don't permit any witness examination by telephone.
10 So whatever witnesses are called have to be present in court.
11 Okay?

12 MR. HEAL: It's Laird Heal. Thank you very much, Your
13 Honor.

14 THE COURT: Okay. Anything else before we go on to
15 the next matter, Mr. Wishnew, on this?

16 MR. WISHNEW: No, Your Honor.

17 THE COURT: All right. Thanks very much, Mr. Heal.
18 You can be excused if you want; you can stay on if you wish.

19 MR. HEAL: This is Laird Heal. Thank you very much,
20 Your Honor.

21 THE COURT: Okay. All right. Go ahead, Mr. Wishnew.

22 MR. WISHNEW: Thank you, Your Honor. The next matter
23 is on the bottom of page 8 continuing on to page 9, the ResCap
24 Borrower Claims Trust's objection as to claim 725 filed by
25 William J. Futrell. Like the last matter, this too is a status

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1 conference. I believe on the phone is Thomas Margolis, Mr.
2 Futrell's counsel.

3 MR. MARGOLIS: Correct.

4 THE COURT: Okay, Mr. Margolis.

5 MR. WISHNEW: Your Honor --

6 THE COURT: Go ahead, Mr. Wishnew.

7 MR. WISHNEW: -- similar to the prior matter -- well,
8 let me rephrase that. The parties have had discussions since
9 the Court issued its opinion sustaining in part and overruling
10 in part the Borrowers Trust's objection to the claim filed by
11 William Futrell. And while Mr. Margolis has provided some
12 damages calculations to us, we have a fundamental concern about
13 the causation or the nexus between the damages and the actual
14 disputed QWRs that remain really the only open issue between
15 the parties at this point in time.

16 Long story short, Your Honor, we've not been able to
17 consensually resolve the matter yet, so we'd like to move
18 forward towards an evidentiary hearing in that regards.

19 We did provide Mr. Margolis with a proposed form of
20 scheduling order. I'll run through that quickly, Your Honor.
21 All fact discovery would be completed no later than October
22 3rd. Expert discovery, if needed, would be no later than
23 forty-five days after the close of factual discovery. And
24 the -- let's see -- I'm just trying to think of appropriate
25 dates, Your Honor. That would really be it, Your Honor, in

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1 terms of hard dates. And then we'd follow Your Honor's
2 guidance in terms of scheduling an evidentiary hearing.

3 THE COURT: Right. Well, I'm also going to require a
4 pre-trial order --

5 MR. WISHNEW: Yes.

6 THE COURT: -- joint pre-trial conference order using
7 the template.

8 Mr. Margolis, if you look at my -- at the Court's
9 Website under my chambers rules, you'll see the template that I
10 use for joint pre-trial conference orders. While this is not
11 an adversary proceeding, it's a contested matter, and I use
12 that same form for most contested matters as well. So you'll
13 see what's required by looking there.

14 MR. WISHNEW: Your Honor --

15 MR. MARGOLIS: Okay.

16 MR. WISHNEW: -- I would just add for the record, that
17 the form of proposed case management and scheduling order we
18 did provide to Mr. Futrell was Your Honor's form order.

19 THE COURT: Yes, right.

20 MR. WISHNEW: So --

21 THE COURT: And if you know, Mr. Margolis, the
22 template for case management and scheduling orders is also on
23 the Website, so --

24 Mr. Margolis have you had a chance to consider -- I
25 take it Mr. Wishnew gave you these proposed dates before?

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1 MR. MARGOLIS: I will tell you that I am learning as
2 we go. At this moment -- anyway, yeah, I'm learning as we go
3 with many of this.

4 THE COURT: I don't understand what you mean by that.

5 MR. MARGOLIS: Okay. Okay. It's a learning process
6 for me as far as what the Court has just indicated on any
7 template. And just -- and just moving this matter along.

8 THE COURT: Okay. We need to get this scheduled.

9 MR. WISHNEW: Yeah.

10 THE COURT: What I'm going to ask you to do, Mr.
11 Wishnew, is to speak with Mr. Margolis in the next couple of
12 days. Perhaps you could either e-mail him copies of the -- and
13 maybe you've already done this -- of the scheduling order --
14 draft scheduling order you've done.

15 MR. WISHNEW: Yes, we did fax -- Mr. Margolis doesn't
16 have an e-mail address, so we've been communicating --

17 THE COURT: Okay.

18 MR. WISHNEW: -- by facsimile.

19 THE COURT: Do you have e-mail, Mr. Margolis?

20 MR. MARGOLIS: I do.

21 MR. WISHNEW: Okay. So the two of you ought to speak.
22 I think it's a lot easier communicating by e-mails than with
23 fax machines. So speak -- you ought to speak today, if
24 possible, with Mr. Wishnew, give him your e-mail address, so
25 that you can communicate by e-mail. Maybe you can e-mail what

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1 you've already faxed to him, Mr. Wishnew, with the proposed
2 dates.

3 MR. WISHNEW: Yes, Your Honor.

4 THE COURT: I try to move these things along pretty
5 quickly, Mr. Margolis. So see if the two of you can work out
6 the schedule. If you can, submit it as a proposed order --
7 scheduling order to me. If you can't agree, let me know and
8 we'll have another telephone conference. You won't have to
9 come down, Mr. Wishnew. We're not going to wait for the next
10 omnibus hearing date to do that.

11 MR. WISHNEW: Very good, Your Honor.

12 THE COURT: Does that work for you, Mr. Margolis?

13 MR. MARGOLIS: Yes.

14 THE COURT: All right. And just so you know, once
15 fact discovery is closed -- and I'm not sure this is going to
16 be a matter for expert discovery -- once discovery is closed,
17 you'll get an evidentiary hearing pretty quickly. It won't be
18 months, it'll be weeks. Okay? And the two of you ought to
19 discuss how many -- you may have heard my prior conversation
20 with Mr. Heal -- how many witnesses; what's your estimate of
21 time. I usually require direct testimony in declaration form
22 if it's of somebody who you can control, so that you can get a
23 declaration, with the witness available in court for live
24 cross-examination. And that's generally how we proceed to try
25 and streamline the amount of time required for the evidentiary

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1 hearings.

2 Okay, so the two of you, why don't you discuss it, see
3 if you can work out the schedule. If so, Mr. Wishnew, I'll
4 submit it and indicate that the two of you have agreed on a
5 schedule, and we'll go from there.

6 The last piece, as to the date for the hearing, I
7 won't give you right off the bat. We'll wait until you get
8 your discovery done, okay?

9 MR. WISHNEW: Very good, Your Honor.

10 MR. MARGOLIS: Okay.

11 THE COURT: All right, thanks very much. You're
12 excused if you wish to be. You can stay on the phone if you
13 want to.

14 MR. MARGOLIS: Thank you, Judge.

15 THE COURT: Okay.

16 MR. WISHNEW: Your Honor, the last status conference
17 today is dealing with the Borrower Claims Trust's objection to
18 proofs of claim 2769 and 2772 filed by Alvin and Sandra
19 LaBostrie. This was a matter previously adjourned. There was
20 a --

21 THE COURT: All right. Are the LaBostries on the
22 phone? Anybody appearing for the LaBostries?

23 Go ahead.

24 MR. WISHNEW: Your Honor, this was put on as a status
25 conference because the response that the LaBostries submitted

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1 in connection with the Borrowers Trust's claims objection
2 amounted to basically, we need more time; we're still looking
3 for counsel. And this was docketed at 8999.

4 Your Honor, this is one of the -- this is a matter
5 where originally the Borrowers Trust filed the objection. It
6 went uncontested.

7 THE COURT: I'm aware of that.

8 MR. WISHNEW: Okay.

9 THE COURT: I'm aware of this. So --

10 MR. WISHNEW: We just wanted to move it to the next
11 available hearing, subject to --

12 THE COURT: Well --

13 MR. WISHNEW: -- as soon as --

14 THE COURT: -- go ahead and remind me now. I want
15 make sure I'm not confusing it with another one.

16 MR. WISHNEW: Sure, Your Honor.

17 THE COURT: The history is?

18 MR. WISHNEW: The history is, Your Honor, we filed the
19 claims objection, served it. It was -- the matter was
20 uncontested. The Court granted the objection. We subsequently
21 heard from Mr. LaBostrie saying he never got service of it.
22 While we believe our service was proper, we agreed to put it
23 back on the calendar --

24 THE COURT: Right.

25 MR. WISHNEW: -- and allow him to respond. He then

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1 submitted -- the only response he submitted was docket 8999
2 where he said -- where doesn't address any of the substantive
3 allegations or contest any of the facts. He simply just says
4 we're still looking for counsel. And so out of fairness,
5 rather than move forward on a substantive basis today, we put
6 it on for a status conference and are looking for guidance from
7 Your Honor as to how quickly we can get this back on the
8 calendar so we can resolve this matter.

9 THE COURT: What are the omnibus hearing dates in
10 September or October?

11 MR. WISHNEW: I think the only one we have in
12 September, Your Honor, is September 3rd, which --

13 THE COURT: That's too soon.

14 MR. WISHNEW: Yeah. So the --

15 THE COURT: What --

16 MR. WISHNEW: -- I think the first one in October is
17 the first or second week in October, Your Honor.

18 THE COURT: All right. Schedule this for the October
19 omnibus hearing date. Please provide notice directly to the
20 LaBostries now that the Court has set it for that date, and it
21 will not be adjourned.

22 MR. WISHNEW: Thank you, Your Honor.

23 THE COURT: And --

24 MR. WISHNEW: I guess one other question, Your Honor,
25 is --

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1 THE COURT: And likewise, any response -- substantive
2 response from the LaBostries, the deadline should be set two
3 weeks before the hearing, and any reply one week before the
4 hearing.

5 MR. WISHNEW: Understood, Your Honor.

6 THE COURT: Okay?

7 MR. WISHNEW: Yes, Your Honor. That brings us to the
8 last matter on today's calendar, Your Honor, which is the
9 claims objection. This is at agenda -- or under section 3 on
10 page 10 of today's agenda. It's the ResCap Borrower Claims
11 Trust eighty-eighth omnibus objection.

12 And Your Honor, through the eighty-eighth -- I'm
13 sorry. The eighty-eighth objection was filed at docket number
14 8859 on July 8th. Through this objection, the Borrowers Trust
15 seeks to expunge twenty proofs of claim that do not represent
16 valid pre-petition claims against the debtors. The Borrowers
17 Trust thoroughly examined the debtors' books and records in an
18 effort to validate the accuracy of the allegation made in the
19 responses and the claims at issue, and determined the books and
20 records do not show any liability due and owing to the
21 respondents.

22 Responses to the objections were due on August 7th.
23 The Borrowers Trust received three responses to the objection.
24 The Borrowers Trust is addressing two of those responses today,
25 claim number 960 filed by Michael Boyd -- his responses were

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1 docketed at 8974 and 8977; and claim 3503 filed by Mohammed
2 Ghods and Heidi Ghods, docket number 9000. The Borrowers --

3 THE COURT: All right, let me ask, is anyone -- is Mr.
4 Boyd or anyone else appearing for Mr. Boyd?

5 MR. GHODS: Hello, Your -- oh, Mr. Boyd? I'm sorry.

6 THE COURT: Okay. And I'm sorry, the Ghods was the
7 other one?

8 MR. WISHNEW: Yes, Your Honor.

9 THE COURT: Is anyone appearing for the Ghods?

10 MR. GHODS: Yes. Good morning, Your Honor. Mohammed
11 Ghods for the Ghods' claim.

12 THE COURT: Okay, I'm sorry, if I mispronounced your
13 name.

14 MR. GHODS: No problem, at all.

15 THE COURT: Let's -- so those are the only two that
16 are contested?

17 MR. WISHNEW: Those are the only two, Your Honor.

18 THE COURT: Let's deal with Boyd first. So go ahead.

19 MR. WISHNEW: Sure.

20 THE COURT: First, Mr. Wishnew, I'll hear from you.
21 And then I'll hear from Mr. Boyd.

22 MR. WISHNEW: Thank you, Your Honor. Your Honor, with
23 regards to Mr. Boyd, this is a claim that derives from pre-
24 petition litigation. And the matter has gone fully through the
25 appeals process. There were --

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1 THE COURT: Yes. This is the one where the -- you
2 twice before objected to the claim on res judicata grounds.

3 MR. WISHNEW: That's correct, Your Honor.

4 THE COURT: The first time the motion was denied
5 without prejudice, because Mr. Boyd had filed a petition for
6 rehearing in the Ninth Circuit, and under applicable Ninth --
7 under applicable California law -- because they're state court
8 claims --

9 MR. WISHNEW: State court claims.

10 THE COURT: -- state law claims, the California rule
11 in res judicata is that it must be a final judgment, and no
12 appeals --

13 MR. WISHNEW: Correct, Your Honor.

14 THE COURT: -- pending. And so I denied the first
15 one.

16 MR. WISHNEW: Right.

17 THE COURT: Then you made another motion -- another
18 objection. And I denied without prejudice that second time,
19 because Mr. Boyd had filed a petition for writ of certiorari
20 and it had not yet been acted on. And I believe in -- was it
21 in March that the Supreme Court denied certiorari?

22 MR. WISHNEW: It was --

23 THE COURT: Maybe that's the wrong date.

24 MR. WISHNEW: -- May 26th, Your Honor.

25 THE COURT: I'm sorry, what's the date again?

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1 MR. WISHNEW: He petition -- Mr. Boyd petitioned for
2 certiorari March 20th.

3 THE COURT: Yeah, and then --

4 MR. WISHNEW: It was denied May 26th.

5 THE COURT: Okay. So May 26th the Supreme Court
6 denied cert. Okay. So in the prior April opinion which was
7 when the cert petition had been filed --

8 MR. WISHNEW: Right.

9 THE COURT: -- I laid out what the law is on res
10 judicata. And your argument is that cert's denied, final
11 judgment, res judicata applies, and the claim should be
12 expunged on the basis of res judicata. Correct?

13 MR. WISHNEW: Exactly, Your Honor. Yes.

14 THE COURT: Mr. Boyd has also asked that the stay be
15 lifted?

16 MR. WISHNEW: So Mr. Boyd, I believe in late July of
17 this year, filed a complaint against the U.S. Treasury and GMAC
18 Mortgage, and in connection with that complaint, has sought
19 stay relief. Now, we advised him prior to today's hearing that
20 trying to pursue any action like that against GMAC Mortgage was
21 in direct violation of the plan injunction and confirmation
22 order, and asked for it to be dismissed.

23 I think -- and I'll let Mr. Boyd confirm -- he has
24 dismissed it as to GMAC Mortgage, so that might moot his stay
25 relief motion, but I'll let Mr. Boyd address that point.

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1 THE COURT: Okay. Because it was my understanding
2 that -- and he can correct me -- but my understanding was the
3 complaint was dismissed against GMAC, but it was unclear to me
4 whether by the stay relief motion, he was seeking to reinstate
5 the claim against GMAC. But --

6 MR. WISHNEW: Correct, Your Honor.

7 THE COURT: All right. Let me hear from Mr. Boyd. I
8 think I have a pretty good idea. I remember -- I looked
9 yesterday and went through the papers so --

10 MR. WISHNEW: Sure.

11 THE COURT: -- I'm quite aware of the background. Mr.
12 Boyd? Mr. Boyd? It's your chance to respond.

13 COURT CALL OPERATOR: Pardon me, Your Honor. This is
14 this CourtCall operator. His line is still connected.

15 THE COURT: Okay. Mr. Boyd, this is your chance.
16 I've been informed that you're still connected to the hearing,
17 you previously made your appearance. Do you wish to be heard
18 now?

19 I'm taking the matter under submission on the basis of
20 the papers that have been filed, and I'll enter an appropriate
21 decision or order.

22 MR. WISHNEW: Thank you, Your Honor. So that brings
23 us to the last matter, which is the claim of Mr. and Mrs.
24 Ghods. I apologize for mispronouncing the claimants' name
25 earlier.

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1 Your Honor, this claim deals with -- essentially, Mr.
2 Ghods has asserted that there was not a secured interest that
3 GMAC Mortgage was protecting when it placed property insurance
4 on the underlying property. In response to that point, in our
5 reply, we have provided both the recorded deed of trust
6 originally with Ditech, as well as the assignment of that deed
7 of trust to -- from Ditech to GMAC Mortgage.

8 In addition, Mr. Ghods has asserted that given his
9 sale of the property in 2004, that he wasn't responsible for
10 maintaining insurance on the property, since he no longer owned
11 it. However, he has put forth nothing through either case law
12 or anything contrary to the terms of the deed of trust to
13 suggest that either he has the ability to absolve himself of
14 the responsibilities under the deed of trust or that GMAC
15 Mortgage acted improperly in any way.

16 So it is our position that GMAC Mortgage's actions
17 were proper and that there is no valid basis for a claim
18 against GMAC Mortgage at this point in time.

19 THE COURT: All right, Mr. Ghods, do you want to be
20 heard?

21 MR. GHODS: Thank you, Your Honor. The problem I have
22 is that most of the arguments that are being made here are
23 launched off the reply. And I got the reply just a couple days
24 ago. And I did see that the deed of trust has been included in
25 the supplemental declaration that was submitted. That deed of

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1 trust has been missing in action for years. It's the first
2 time I've seen it in as many years as I've dealt with this
3 issue.

4 I would like to get an opportunity to brief this. I
5 think there's a factual issue, because obviously the
6 supplemental declaration is not by anyone who has personal
7 knowledge of these things, and statements are made that I can
8 tell the Court, since I'm also the claimant here, they're just
9 outright false in terms of when the notice was given to GMAC
10 and whether a package allegedly was sent. There was no such
11 package sent.

12 So there is some factual disputes here. But I would
13 like to get it resolved, because this is a snake that keeps on
14 living that shouldn't be living. At some point, I guess,
15 someone has to make a decision on it. It's absurd to have to
16 procure insurance for a property that's not owned. And I think
17 there is a "due on sale" clause law out there that deals with
18 these issues when the lender decides, despite knowledge, to not
19 call the collateral.

20 I am -- I've seen the deed of trust now, and that was
21 missing, obviously. So that's not the argument that is going
22 to be further beaten into the ground. They have produced a
23 deed of trust. But as to the remainder, I think there is
24 substantial factual issues and a different legal picture you
25 have to look at. So I'm requesting an opportunity to file a

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1 further brief and some additional comments for you to consider
2 in light of their reply. And if you find there's a factual
3 dispute, I guess we'll have to have something more. But if
4 that's sufficient for you to make a ruling as a matter of law,
5 then let's do so with the full picture.

6 THE COURT: What do you believe are the factual
7 issues?

8 MR. GHODS: Well, in terms of when the lender or
9 servicer was put on notice of the sale. What happened, Your
10 Honor, is the title company here could not find any evidence of
11 these deeds of trust. So it was presumed that it was an
12 unsecured loan because of failure to record. This package
13 that's been submitted to you with the reply is the first time
14 the deed of trust has appeared.

15 So the reason that they weren't paid out of the escrow
16 from the sale is because they did not appear on the record. We
17 made the payments, my wife and I, because we believed it was an
18 unsecured loan, so that nobody has reneged on payments.

19 So the issue became this placement of forced insurance
20 on the property. And we advised the lender that it was -- the
21 property had been sold, and they didn't have a -- we didn't
22 have an ability to insure it and they didn't have an ability,
23 or they could call it, and they decided not to call it,
24 apparently. And they've continued to charge his force placed
25 insurance.

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1 So I want to address those issues a little bit more in
2 light of the supplemental declaration that's been filed in
3 reply. Thank you, Your Honor.

4 THE COURT: Mr. Wishnew?

5 MR. WISHNEW: Your Honor, it seems a bit strange to me
6 that --

7 THE COURT: Was the deed of trust recorded?

8 MR. WISHNEW: Yes, Your Honor.

9 THE COURT: When was it recorded?

10 MR. WISHNEW: The deed of trust was recorded in 1998.
11 And the assignment of deed of trust from Ditech to GMAC
12 Mortgage, was recorded in 1999. So they could have gone to the
13 public records and --

14 THE COURT: Yeah, I don't know who searched for it,
15 Mr. Ghods, but there -- if you had somebody search for it and
16 they didn't find it, that's not their problem.

17 MR. WISHNEW: Also --

18 MR. GHODS: No, I realize that, Your Honor. I
19 personally wasn't the -- it wasn't my search. I searched
20 subsequently and I couldn't find it. It was the title company.
21 And I forget who it was. It was -- if it wasn't First
22 American, it was one of the big ones. And they could not find
23 any evidence for whatever reason. I have -- I could not
24 explain that to you.

25 But then the conversation -- and as I said, I'm

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1 getting past that point, because they have what -- they have
2 produced what appears to be a recorded document. And so I'm
3 not interested in trying to quibble with something that seems
4 to be, at least, you know, proper on its face.

5 But what I have an issue is the notice to the lender
6 and the issue of what they were going to do once they were
7 aware of the sale. Because at that point, our position -- my
8 wife and I -- was that we were making the payments, and but
9 there was no need for insurance. And I think this is where the
10 dispute is.

11 THE COURT: But Mr. Ghods --

12 MR. GHODS: Their position was --

13 THE COURT: -- Mr. Ghods --

14 MR. GHODS: -- there is --

15 THE COURT: -- the law is pretty clear that if that
16 deed of trust is recorded and remains of record, it's valid and
17 enforceable. Whether somebody called it or not called it,
18 their rights are not waived by -- it's pretty unusual that
19 somebody would sell the property without -- that a buyer would
20 want to be -- would get clear title and want a lien release.
21 But assuming -- and there also are provisions about giving the
22 lender notice of sale. But you don't seem to be disputing now
23 that there was a valid recorded deed of trust still in place.

24 You continued to make payments. I don't think you did
25 it out of the goodness of your heart. I don't know what the

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1 terms of your sale were.

2 MR. GHODS: Well --

3 THE COURT: But here's what I'm going to do. You're
4 correct that it was presented with a supplemental declaration
5 with the reply, and you've not had an opportunity to respond to
6 that. I'm going to give you two weeks from today to file any
7 further response. And I'll give the Trust one week from the
8 time you receive Mr. Ghods' supplemental filing for any
9 additional filing. At that point, the matter will be taken
10 under submission without further hearing, unless I specifically
11 call for it.

12 MR. GHODS: Yes. If I -- now that I have your ear,
13 may I have it for one more second?

14 THE COURT: Sure.

15 MR. GHODS: In light of your last comments, Your
16 Honor?

17 THE COURT: Yes, go ahead.

18 MR. GHODS: The payments were not made out of the
19 goodness of my heart. It was made out of what I believed was a
20 clear obligation under the note to make those payments. And we
21 have dutifully paid them.

22 The dispute here is -- and I think it's strange that
23 counsel said and I think Your Honor mentioned that what has
24 happened here is the title company gave the green light for the
25 sale and there's been several subsequent sales. So the issues

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1 that have come up -- I'll address them in the brief -- but I
2 think it is unique and it does require a little bit of careful
3 attention, because the lender here, with a deed of trust,
4 presumably, if they were going to take action today, they're
5 going to have to take a foreclosure action, if there was a
6 breach of the note. Assume that for a second. They're --

7 THE COURT: The only issue --

8 MR. GHODS: -- going to have to --

9 THE COURT: -- Mr. Ghods?

10 MR. GHODS: I beg your pardon.

11 THE COURT: The only issue before me is whether you
12 have a valid claim. Whether title to the property is clouded
13 in some fashion is not my problem. What I have is a claim that
14 you have filed against the estate and the Trust's objection to
15 the claim. There appears to be -- I'm not deciding it now --
16 there appears to be a contractual obligation in the mortgage
17 that there be insurance and gives them the right to place
18 insurance if you don't provide the evidence of insurance.

19 They indicated that that's the basis for their placing
20 the insurance. I'm going to give you the two weeks to file any
21 further papers. Mr. Wishnew will have one week from the time
22 that you submit your supplemental response. And then the
23 matter will be taken under submission unless the Court decides
24 that another hearing is required, in which case we'll give you
25 notice of it. Okay?

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1 MR. GHODS: Yeah, thank you very much, Your Honor.
2 Appreciate it.

3 THE COURT: All right. Thank you very much.

4 MR. GHODS: Okay.

5 MR. WISHNEW: Your Honor, that addresses the two
6 contested matters. There was a third response we received that
7 was resolved consensually. So based on the record before the
8 Court and the submissions, we'd ask that the balance of the
9 omnibus claims objection be granted.

10 THE COURT: And it is.

11 MR. WISHNEW: Thank you, Your Honor.

12 THE COURT: So the Court has reviewed the eighty-
13 eighth omnibus objection to borrower claims. It appears as ECF
14 docket number 8859. By the objection, the Trust seeks to
15 disallow and expunge twenty claims on the basis that the claims
16 are not based on liabilities of the debtors, and reduced two
17 claims and allow each claim in a modified reduced amount.

18 The oppositions to the objection were filed by Mr.
19 Boyd, who we've heard from; from Mohammed and Heidi Ghods, who
20 we've heard from; Kechia Island --

21 MR. WISHNEW: That was the claim resolved
22 consensually, Your Honor.

23 THE COURT: All right. So Island has been resolved.
24 As to the remainder of the claims, the Court has reviewed the
25 objection. The objection is well taken. The objection is

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1 sustained. And obviously I'm not resolving today -- the Boyd
2 claim is under submission, the Court is going to enter a
3 decision or order with respect to Boyd. And as to the Ghods,
4 I've set forth the additional opportunity for the Ghods and the
5 Trust to submit supplemental filings.

6 MR. WISHNEW: Would Your Honor prefer or like that we
7 incorporate those submission deadlines into the form of order
8 for the eighty-eighth --

9 THE COURT: No, I think we're clear --

10 MR. WISHNEW: Okay.

11 THE COURT: -- on that. So the form of the order
12 should deal with everything other than the Ghods and Boyd.

13 MR. WISHNEW: Yeah.

14 THE COURT: Okay?

15 MR. WISHNEW: Yeah, very well, Your Honor.

16 THE COURT: All right. Thank you very much, Mr.
17 Wishnew.

18 MR. WISHNEW: Thank you for your time.

19 THE COURT: All right, we're adjourned.

20 (Whereupon these proceedings were concluded at 10:37 AM)

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I N D E X

RULINGS

	PAGE	LINE
Letter scheduling order re Gosselin claim is	8	22
approved by the Court.		
Trust's eighty-eighth objection to claims is	30	25
sustained as to the uncontested and resolved		
claims.		

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C E R T I F I C A T I O N

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I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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Penina Wolicki

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PENINA WOLICKI

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Date: August 21, 2015

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